

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2493 B
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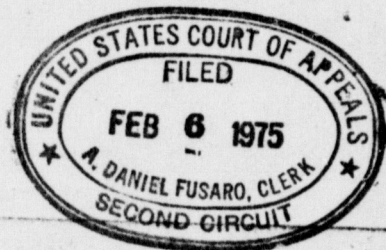
IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 74-2493

UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE
V.
HAROLD SIMMONS
DEFENDANT-APPELLANT

APPENDIX TO BRIEF OF
DEFENDANT - APPELLANT

THOMAS D. CLIFFORD
COUNSEL FOR DEFENDANT -
APPELLANT
770 CHAPEL STREET
NEW HAVEN, CONNECTICUT



PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U.S.: Peter Dorsey, U.S. Atty.
vs.		Peter A. Clark
HAROLD SIMMONS		Stewart W. Jones, U.S. Atty
JAMES HASKINS		Barry J. Cutler, Asst. US Atty
MICHAEL ALSTON and		Federal Building
TIMOTHY ADAMS		New Haven, Conn.
SIMMONS: Thomas D. Clifford (apptd)		For Defendant:
Federal Public Defender		David N. Rosen (apptd)
450 Main Street		265 Church Street
Hartford, Conn.		New Haven, Conn.
ALSTON:		HASKINS: John R. Williams (apptd)
		265 Church Street
		New Haven, Conn.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation U. S. Code	Docket fee				
Title 18					
Sec. 2113(a), (b), (d); 2(a) & 2(b); 371					

DATE	PROCEEDINGS
1974 6/20	The Grand Jury at New Haven returned a True Bill of Indictment charging violation of Title 18, U.S.C. 2113(a), (b), (d); 2(a) and 2(b) and 371 - 4 counts - taking by force, violence and intimidation from person and presence of another, money belonging to and in care of bank, deposits of which were then insured by F.D.I.C.; taking and carrying away with intent to steal money in excess of \$100.00 belonging to and in care of said bank; in committing said acts, assaulting and putting in jeopardy the lives of others by use of dangerous weapons; and conspiring to commit said acts. Bench Warrants may issue, with bonds to be set by U.S. Magistrate. Newman, J. m-6/21/74.
6/21	Bench Warrant issued for each defendant in duplicate and with certified copy of the Indictment handed to U.S. Marshal at New Haven for service.
6/25	HASKINS, SIMMONS, ALSTON: Application for Writ of Habeas Corpus Ad Prosequendum, for each defendant, filed by the Government and allowed. Newman, J. m-6/25/74. Two certified copies of each application handed U.S. Marshal at New Haven for service.
6/25	ALSTON: CJA Form 20 appointing David N. Rosen, Esq., to represent defendant, filed. Newman, J. Copies distributed. (over)

DATE	PROCEEDINGS
1974	
6/25	HASKINS: CJA Form 20 appointing John R. Williams, Esq., to represent defendant, filed. Newman, J. Copies distributed.
6/26	SIMMONS: CJA Form D appointing Thomas D. Clifford, Federal Public Defender, to represent defendant, filed and entered. Newman, J. m-6/26/74.
6/28	ALSTON: PLEA: Defendant remains mute. Plea of not guilty entered to Counts 1, 2, 3 and 4 by the Court. Case continued on bond of \$100,000 with surety. Attorney David Rosen appointed guardian ad litem. Standing Order of the Court will apply to this case. Newman, J. m-6/28/74.
6/28	HASKINS: PLEA: Defendant remains mute. Plea of not guilty entered to Counts 1, 2, 3 and 4 by the Court. Case continued on bond of \$100,000.00, with surety. Standing Order of Court will apply to this case. Newman, J. m-6/28/74.
6/28	SIMMONS: PLEA: Defendant remains mute. Plea of not guilty entered to Counts 1, 2, 3 and 4 by the Court. Case continued on bond of \$100,000.00, with surety. Standing Order of Court will apply to this case. Newman, J. m-6/28/74.
7/2	SIMMONS, HASKINS, ALSTON: Motion to Suppress Identification Testimony, Motion to Suppress Statements, and Motion to Suppress Evidence, filed by defendants.
8/6	SIMMONS, HASKINS, ALSTON: Court Reporter's Notes of proceedings held on June 28, 1974 (Pleas), filed. Gale, R.
"	SIMMONS, HASKINS, ALSTON: Court Reporter's Sound Recording of proceedings held on June 28, 1974 (Pleas), filed. Gale, R.
8/20	ALSTON: CJA Form 21 authorizing Investigator H. Paul Rinker to interview witnesses, filed. Newman, J. Copies distributed.
8/20	HASKINS: Motion to Prohibit Interference with Attorney-Client Relationship, filed by defendant.
8/28	SIMMONS: Motion to Stay the Proceeding, to Strike the Jury Panel and For a Supplemental Order Concerning the Selection of Prospective Petit Jurors, filed by defendant.
8/30	ALSTON: Motion to Prohibit Interference With Attorney-Client Relationship, filed by defendant.
9/9	HASKINS: Motion to Stay the Proceeding, to Strike the Jury Panel and for a Supplemental Order Concerning the Selection of Prospective Petit Jurors.
9/9	HASKINS: Brief in Support of Motion to Prohibit Interference With Attorney-Client Relationship, filed by defendant.
9/10	HASKINS: Motion for Service of Subpoenas at Government Expense, filed by defendant.
9/10	ALSTON: Motion for Service of Subpoenas at Government Expense, filed by defendant.
9/9	HASKINS: CJA Form 21 authorizing services of Paul Rinker, Investigator, filed. Newman, J. Copies distributed.
9/10	HASKINS: Motion for Service of Subpoenas at Government Expense endorsed as follows: Motion Granted as to Wardens of Community Correctional Centers at Hartford and Brooklyn; denied as to Commissioners Manson and Lopes. Newman, J. m-9/10/74. Copies mailed to counsel.
9/10	ALSTON: Motion for Service of Subpoenas at Government Expense endorsed as follows: Motion Granted. Newman, J. m-9/10/74. Copies mailed to counsel.
9/16	SIMMONS: Motion to Join Co-Defendants' Motions, filed by defendant.
9/13	MOTION to Quash Subpoenas, filed by Assistant Attorney General for State of Connecticut on behalf of John R. Manson, Commissioner of Corrections.

DATE	PROCEEDINGS
1974	
9/13	Appearance of Stephen J. O'Neill, Assistant Attorney General for the State of Connecticut, filed on 9/13 of John R. Manson, Commissioner of Corrections in connection with Motion by defendants Prohibiting Mr. Manson from opening and/or inspecting their mail.
9/13	Objection to Defendants' Motions to Prohibit Interference with Attorney-Client Relationship, filed.
9/13	Marshal's Return Showing Service, filed: 3 subpoenas to testify.
9/18	Hearing held on (1) Defendants' Motions to Suppress and (2) Defendant Haskins' Motion to Prohibit Interference with Attorney-Client Relationship. Court hears argument on Motion of Conn. Corrections Commissioner John R. Manson re alleged mail issue. Agreement reached by the parties and approved by the Court as to delivery of mail to defendants-inmates. Suppression hearing: Four Government witnesses sworn and testified Court Ex. #1 and 2, marked for Ident. Govt. Ex. A and B, marked for Ident. Govt. Ex. A-1, A-2, A-3, C-2, C-2 and C-4, filed. Govt. Ex. C-1, marked for Ident. Deft. Ex. #1, 2 and 3, filed. Newman, J. m-9/19/74. Hearing continued to Monday, Sept. 23, 1974 at 10:30 A.M.
9/19	Motion to Suppress Evidence Derived from Unlawful Electronic Surveillance, filed by all defendants.
9/23	Continued hearing on (1) Defendants' Motion to Suppress and (2) Defendant Haskins' Motion to Prohibit Interference with Attorney-Client Relationship. 3 defendants' witnesses sworn and testified. 4 Government witnesses sworn and testified. Government Exhibits D-1 thru D-4, filed. Government Exhibit B made full exhibit. Court Exhibits 3, 4, 5, 6 and 7 marked for identification. Government Exhibits E, E-1 thru E-12 and F, F-1 thru F-4, marked for identification. Government Exhibits E, E-1 thru E-12 made full exhibits. Defendants move for transcripts of statements of identification witnesses. Decision reserved. Court adjourned at 4:05 P.M. to Tuesday, September 24, 1974, at 2:00 P.M. Newman, J. m-9/24/74.
9/24	SIMMONS, HASKINS, ALSTON: JURY TRIAL COMMENCES: Defendant's (Alston) Proposed Questions on Voir Dire Examination, filed. Defendant's (Simmons) Submission of Voir Dire Questions, filed. Defendant's (Simmons) Motion for An Individual Voir Dire, filed. Joined in by other two defendants. Defendant's (Haskins) Proposed Voir Dire Questions, filed. Court reviews voir dire questions. Motion for Individual Voir Dire, denied. Defendants' joint Motion to Incorporate Gonzalez Record, granted; as to challenge it is denied. Motions to Dismiss, filed by defendants Simmons and Haskins. Defendants' Motion to Introduce themselves to the jury, granted. Court allows Government 8 challenges and defendants 24, including alternates. 3:10 p.m. Jury enters courtroom (67 jurors present). Court introduces attorneys and defendants to panel. Court describes case on trial and jurors interrogated by the court as to their qualifications. 3:55 p.m. Jurors who have heard or read about case return to jury room. Due to number of jurors court allows Government 6 challenges and defendants 18. 4:30 p.m. Remaining 20 jurors leave courtroom and summoned one by one by the court and interrogated. 2 jurors accepted by both sides. 5:00 p.m. Entire jury panel enters courtroom and excused to 10:00 a.m., Sept. 25, 1974. 5:15 p.m. Court adjourned. Newman, J. m-9/25/74.
9/24	On JON's Jury Assignment List. Ready #1. Jury impanelling commenced. Newman, J. m-9/26/74.
9/25	JURY TRIAL CONTINUES: Motion for free transcripts filed by defendant Haskins. Continued jury selection. 65 jurors present.

(over)

DATE
9/25

PROCEEDINGS

Court allows defendants total of 4 conditional extra challenges. If the panel is not completed at the conclusion of the interrogation of remaining 26 jurors, the Court will undo the first conditional challenge and make that juror part of the panel and so on until there are 12 jurors and 2 alternates. 9 jurors accepted by both sides. 4:40 p.m. remaining jurors enter courtroom and excused to 10:00 a.m. September 27, 1974. Court adjourned to Friday. Newman, J. m-9/26/74.

9/27

JURY TRIAL CONTINUES: Continued jury selection. 30 jurors present. Court allows 2 additional challenges with respect to alternate One additional juror and two alternates accepted by both sides. 2:35 p.m. Jury selected enters courtroom and 12 jurors and two alternate impanelled and sworn. 2:45 p.m. Jury excused until notified to report by court. Continued hearing on defendants' Motion to Dismiss. Defendants' Ex. 4 filed. Decision reserved. Continued hearing on defendants' Motion to Suppress. Ralph Cimino previously sworn resumes stand and testifies. Defendants' Ex. 5 (Court Ex. 5), filed. Court Ex. 8 marked for identification. 1 Government witness sworn and testified. Government Ex. G marked for identification. Hearing on defendants' Motion for Free Transcript, denied. Defendants' Motion to Dismiss, denied. 5:15 p.m. Court adjourned to Sept. 30, 1974 at 10:00 a.m. Newman, J. m-9/30/74.

9/30

HASKINS, SIMMONS, ALSTON: Court Reporter's Notes of proceedings held on Sept. 24, 25 & 27, 1974 (Trial), filed. Gale, R. (3 pads)

9/30

JURY TRIAL CONTINUES: Continued hearing on Defendants' Motion to Suppress. Points and authorities in support of Motion for Free Transcripts, filed by defendant Haskins. Witness Sweeney resumes stand for continued cross-examination. Defendants' Ex. 6, filed. Court Exhibits 9, 10 and 11, filed. Attorney Clifford reports to court that his client wishes that he withdraw from the case. Court will not allow Atty. Clifford to withdraw but defendant Simmons may proceed pro se. Defendant Simmons renews Motion to Challenge Jury Array, denied. Defendant Simmons renews Motion to Dismiss, denied. 4 Government witnesses sworn and testified. Government Exhibits F, F-1 thru F-4 admitted as full exhibits. Government Exhibits H, H-1 thru H-15, I, I-1 thru I-4, marked for identification. Government Exhibit H made full exhibit. Attorney Rosen submits subpoena to court on behalf of defendant Alston. Court rules subpoena may issue. 3:55 p.m. Court adjourned to Wednesday, Oct. 2, 1974 at 10:00 a.m. Newman, J. m-10/1/74.

10/2

Court holds closed hearing on defendants' renewed challenge to a juror. Motion to challenge denied. Defendant Simmons' oral motion to disqualify Judge Newman, denied. Continued hearing on motion to suppress. 5 Government witnesses sworn and testified. Government witness James Grasso previously sworn resumes stand and testified. Court Exhibits 12, 13, 14, 15 and 16 marked for identification. Motion by Atty. Rosen to have law student intern Pam Samuelson admitted for the purpose of this case, denied. Appearance form filed. Court Exhibits 17 and 18 marked for identification. Government Exhibits J, J-1 thru J-3, K, K-1 thru K-4, filed. Government Exhibits G, H-1 thru H-15, I, I-1 thru I-4, admitted as full exhibits. At bench, Court Exhibit 19 marked for identification and sealed per order of the Court. 5:10 p.m. Court adjourned to 9:30 a.m. October 3, 1974. Newman, J. m-10/3/74.

10/3

Marshal's Return showing service, filed: Subpoena (1).

DATE	PROCEEDINGS
1974 10/3	Continued hearing on Motion to Suppress. Court Exhibits 20, 21 and 22 marked for identification. 6 Government witnesses sworn and testified. Government Exhibits L, L-1 thru L-13, N, N-1 thru N-10, O and P, filed. Government Exhibits M, M-1 thru M-11 marked for identification. Government Exhibits M, M-1 thru M-11 admitted as full exhibits. 5:30 p.m. Court adjourned to Oct. 4, 1974 at 10:00 a.m.
10/4	Continued hearing on Motion to Suppress. 1 Government witness sworn and testified. Court Ex. 23 marked for identification. Government Exs. Q and R-1 thru R-9, filed. Defendant Haskins sworn and testified on own behalf. Government witness Michael Sweeney, previously sworn, resumes stand and testified. Hearing on motion to withdraw in toto filed by Attorney Clifford. Decision reserved. Defendants' oral motion for certain portions of testimony of certain witnesses - decision reserved. At the Bench, Court Ex. 24 marked for identification and sealed upon order of the Court, to be opened and inspected only upon order of another Court. Newman, J. m-10/7/74.
10/7	JURY TRIAL CONTINUES (evidence commences): Public Defender Clifford's motion to withdraw as counsel for defendant Simmons is denied and he will be available to defendant for consultation and advice. Oral ruling on Motion to Suppress Identification - granted as to witnesses Gambardella and Stonski; denied as to all other witnesses. Motion to Suppress re powder residue is denied; Court defers ruling on statements. Court Exs. 25, 26 and 27 marked for identification. 11:20 a.m. 12 jurors and 2 alternates present. 3 Government witnesses sworn and testified. In absence of jury, Government witness Soo Kyung sworn and testified on offer of proof. Government Ex. S filed. 4:01 p.m. jury excused until Oct. 8, 1974 at 10:00 a.m. 4:02 p.m. Court adjourned until Oct. 8, 1974 at 9:45 a.m. Newman, J. m-10/7/74.
10/8	JURY TRIAL CONTINUES: Court Exhibits 28, 29, 30 and 31 marked for identification. 5 Government witnesses sworn and testified. Defendant Haskins' offer of proof on motion to suppress testimony of witness, denied. 12:15 p.m. jury enters courtroom, 12 jurors and 2 alternates present. Government Exhibits T, U, V, W, X and Y marked for identification. 5:12 p.m. Court adjourned until Oct. 9, 1974 at 10:00 a.m. Newman, J. m-10/9/74.
10/9	JURY TRIAL CONTINUES: Defendants' (Haskins and Alston) oral motion for severance, denied. Oral motion of defendant Simmons to disqualify Judge Newman, denied. 10:25 a.m. jury enters courtroom, 12 jurors and 2 alternates present. Government witness Diane Tokarz resumes stand for further testimony. Court Exhibits 32, 33, 34, 35 and 36 marked for identification. 5 Government witnesses sworn and testified. Witness Gambardella recalled in absence of jury for further testimony. 12:20 p.m. jury re-enters courtroom. Government Exhibits Z, AA and BB marked for identification. Government Exhibit AA admitted as full exhibit. 4:55 p.m. Court adjourned to Oct. 11, 1974 at 9:30 a.m. Newman, J. m-10/9/74.
10/10	Court Reporter's Notes of proceedings held on Sept. 18, 1974 (Motions), filed. Gale, R.
10/10	Court Reporter's Notes of proceedings held on Sept. 23, 27, 30, Oct. 2, 3 and 4 (Motions & Trial), filed. Gale, R. (5 pads)
10/9	HASKINS: CJA Form 21 authorizing and approving payment of

(over)

DATE 1974	PROCEEDINGS
	sum of \$102.60 to Court Reporter Gerald Gale for portions of transcript of pretrial hearings for use at trial, filed. Newman, J. Copies distributed.
"	SIMMONS: CJA Form 21 authorizing and approving sum of \$102.60 to Court Reporter Gerald Gale, for portions of transcript of pretrial hearings for use at trial, filed. Newman, J. Copies distributed.
"	ALSTON: CJA Form 21 authorizing and approving payment of sum of \$102.60 to Court Reporter Gerald Gale for portions of transcript of pretrial hearings for use at trial, filed. Newman, J. Copies distributed.
10/11	JURY TRIAL CONTINUES: Court Exhibits 37, 38 and 39 marked for identification. 10:10 a.m. Jury enters courtroom, 12 jurors and 2 alternates present. 4 Government witnesses sworn and testified. Government Exhibits T, U and V admitted as full exhibits. Government Exhibits CC, EE and FF filed. Government Exhibit DD marked for identification. In absence of jury Court discusses testimony to be brought in with offer of proof by Government. 12:00 noon jury re-enters courtroom. 12:55 p.m. jury excused to Tuesday at 10:00 a.m. Defendants' oral motion for a mistrial, denied. 1:03 p.m. Court adjourned to Oct. 15, 1974 at 9:30 a.m. Newman, J. m-10/15/74.
10/15	CJA Form 21 authorizing and approving payment of sum of \$300.00 to Paul Rinker, Investigative Associates, for services, filed. Newman, J. (HASKINS). Copies distributed.
10/15	Continued hearing on Motion to Suppress. Court Ex. 40 marked for identification. 1 Government witness sworn and testified. Defendants' Ex. 7 filed (Court Ex. 40 on Motion to Suppress). Court rules portions of testimony of Witness Baker is admissible. Defendant Haskins oral motion for severance, denied. Court discusses testimony to be brought in with offer of proof by counsel for defendant Alston. JURY TRIAL CONTINUES: 10:50 a.m. jury enters courtroom, 12 jurors and 2 alternates present. Court Exhibits 41 and 42 marked for identification. 4 Government witnesses sworn and testified. Government Exhibit DD admitted as full exhibit. Government Exhibits GG, HH, and II filed. Defendants' Ex. 8 marked for identification. Government Exhibits JJ, KK, LL and MM marked for identification. In absence of jury Court discusses testimony to be brought in with offer of proof by counsel for defendant Haskins. Defendant Haskins' oral motion to sever, denied. Defendant Alston's oral motions to sever and for mistrial, denied. Court inquires of defendant Simmons on behavior during courtroom procedure. Defendant Haskins' motion for mistrial, denied. 4:30 p.m. jury re-enters courtroom. Continued examination of Witness Baker. 4:58 p.m. jury excused to 10:00 a.m. Oct. 16, 1974.
10/16	5:08 p.m. Court adjourned to 10:00 a.m. Oct. 16, 1974. JURY TRIAL CONTINUES: Government reports one witness is sick and requests leave to reopen case if concluded today. Court grants motion to suppress signing of warning cards as to Simmons and Haskins. Continued hearing to suppress. 2 Government witnesses sworn and testified. Court Exhibit 43 marked for identification. Government Exhibits NN-1, NN-2 and NN-3 marked for identification at suppression hearing. Government witness Northrup resumes stand for continued direct. Government Exhibit OO marked for identification. 11:45 a.m. jury enters courtroom. Court Exhibits 44 and 45 marked for identification. 2 Government witnesses sworn and testified. Government Exhibits KK and OO made full exhibits. Government Exhibits NN-1, NN-2 and NN-3 made full exhibits for suppression hearing. Government

continued

DATE	PROCEEDINGS
1974	<p>Exhibits PP, QQ, RR, SS, TT, UU marked for identification. 3:00 p.m. jury excused from courtroom. After consultation with each defendant and counsel, the defendants are removed from courtroom for the remainder of this day. Defendants Maskins and Alston move for mistrial and severance. Motions denied. Defendant Maskins' motion to strike testimony of witness Baker is denied. Witness Baker may be recalled. 4:30 p.m. jury enters courtroom. Defendants are not present. Court Exhibit 46 marked for identification. 1 Government witness sworn and testified. Government Exhibits VV, WW and XX marked for identification. Government Exhibits VV, WW and XX made full exhibits. 5:00 p.m. jury excused until Oct. 17, 1974 at 10:30 a.m. Court withdraws its ruling on defendant Maskins' motion to strike testimony of witness Baker and gives option to defense counsel whether they will claim a mistrial or be satisfied with just the striking of said testimony. Counsel will advise court in the morning. 5:05 p.m. Court adjourned until Oct. 17, 1974 at 10:00 a.m. Newman, J. m-10/17/74.</p>
10/17	<p><u>JURY TRIAL CONTINUES:</u> Court inquires of defendant Simmons, and of defendants Maskins and Alston individually on their behavior during future courtroom proceedings. Court Exhibit 47 marked for identification. Defendants' motion to strike testimony of Officer Baker is granted and motion for mistrial, denied. 11:07 jury enters courtroom, 12 jurors and 2 alternates present. Court informs jury all testimony of Officer Baker is no longer a part of this case. Court Exhibits 48, 49, 50, 51, 52, 53, 54 and 55 marked for identification. 6 Government witnesses sworn and testified. Government Exhibits YY, AC, AE, AI marked for identification. Defendants' motion to strike testimony of Witness Giannotti, denied. Government Exhibits ZZ, AB, AD, AE, AG, AH filed. Government Exhibits JJ, LL, PP, QQ, RR, SS, TT, UU, YY, Y, Z and AE admitted as full exhibits. Government Witness Broni resumes stand and testifies. 3:03 p.m. Government rests with leave to call one additional witness. 4 defendants' witnesses sworn and testified. 4:35 p.m. Court adjourned to Oct. 18, 1974 at 10:00 a.m. Newman, J. m-10/18/74.</p>
10/18	<p><u>JURY TRIAL CONTINUES:</u> 12 jurors and 2 alternates present. Court Exhibit 56 marked for identification. 1 Government witness sworn and testified. Government Exhibit W admitted as full exhibit. Government Exhibit AJ filed. 10:24 a.m. Government rests. Two defendants' witnesses sworn and testified. Defendant Maskins sworn and testified on his own behalf. In absence of jury counsel for defendant Simmons requests that he be permitted pro se summation of his case to the jury - decision reserved. 12:00 N. jury enters courtroom. Continued examination of defendant Maskins. Defendant Exhibit 9 marked for identification. 12:45 p.m. defendant Maskins rests. Defendant Alston sworn and testified on his own behalf. 1:00 - 2:00 p.m. Court recess. Continued examination of defendant Alston. 2:32 p.m. defendant Alston rests. Defendant Simmons sworn and testified. 3:18 p.m. defendant Simmons rests. Jury recess. All defendants make oral motion for judgment of acquittal on Count 4. Court rules that Count 4 will not go to the jury. Request of defendant Maskins for instructions to the jury, filed. 3:26 p.m. jury enters courtroom and is excused to Tuesday at 10:00 a.m. Government requests for jury instructions filed. Court hears counsel on</p>

(over)

DATE 1974	PROCEEDINGS
	requests to charge. Court rules on requests to charge. Court will allow defendant Simmons to present his case to the jury. Weapons will not go to the jury room. Amended Indictment to be submitted. 5:14 p.m. Court adjourned to 9:30 a.m., Oct. 22, 1974. Newman, J. m-10/21/74.
10/21	ALSTON: Request of Defendant For Instructions to the Jury, filed by defendant.
10/18	HASKINS: CJA Form 21 authorizing and approving sum of \$125.00 to be paid to Alan S. Kay, Photographer, for services, filed. Newman, J. Copies distributed.
10/22	JURY TRIAL CONTINUES: Court rules on requests to charge. Court puts on record comment by juror to one court personnel at close of this case on Friday. 10:10 a.m. 12 jurors and 2 alternates enter courtroom. Summation: Government opens 10:11 - 10:40 a.m. Defendant Simmons 10:46 - 11:19 a.m. Recess. Summation continues: Counsel for defendant Alston 11:33 - 11:51 a.m. Counsel for defendant Haskins 11:51 a.m. - 12:15 p.m. Government closes 12:15 - 12:20 p.m. Court's charge 1:42 - 2:23 p.m. 2:23 p.m. 12 jurors retire to jury room. Alternate jurors excused. Government counsel takes exceptions to charge. All defense counsel take exceptions to charge. No further charge given. 2:37 p.m. Exhibits, Indictment taken to the jury room and jury starts to deliberate. 5:45 p.m. note from jury. Court Ex. 57 marked for identification. 5:50 p.m. jury enters courtroom. Court gives supplemental instruction to jury. 5:55 p.m. jury retires to jury room to consider whether to continue deliberations or return tomorrow. 6:05 p.m. note from jury. 6:07 jury enters courtroom. Court Ex. 58 marked for identification. 6:10 p.m. jury excused to 10:00 a.m. Oct. 23, 1974 and to start to deliberate when all 12 are present. 6:15 p.m. Court adjourned to 10:00 a.m. Oct. 23, 1974. Newman, J. m-10/22/74.
10/23	JURY TRIAL CONTINUES: 12 jurors report to jury room. Exhibits, for of verdict and Indictment sent to jury room and deliberations continue. 12:25 p.m. jury returns to courtroom with following verdicts: Defendants Simmons, Haskins and Alston guilty on each of Counts 1, 2 and 3. Jury polled and all answer in the affirmative. Court orders written verdict accepted and filed. 12:35 p.m. jury excused subject to call. Disposition scheduled for Nov. 13, 1974 at 10:00 a.m. 12:36 p.m. Court adjourned. Newman, J. m-10/23/74.
11/1	SIMMONS, HASKINS, ALSTON: Response to Defendants' Motions Seeking Disclosure of Electronic Surveillance, filed by the Government.
11/4	ADAMS: Magistrate's Warrant of Arrest, with Complaint attached, filed.
11/12	ALSTON: Defendant's Submission at Sentencing and Affidavit of Pamela Samuelson, filed.
11/13	Hearing on defendants' pending motion to prohibit interference with attorney-client relationship and therefore to dismiss indictment. Defendants' Exhibits 10, 11, 12, 13, 14, 15 and 16 to Suppression, filed. 3 defendants' witnesses sworn and testified. Defendants Simmons and Haskins, previously sworn at trial, take stand and testify. 10:00 a.m. Oral argument. Motion denied. Newman, J. m-11/13/74.
11/12	ALSTON: DISPOSITION: Imprisonment for period not to exceed 25 years on Counts 1, 2 and 3 as a general sentence, pursuant to 18 U.S.C. 4208(a)(1), defendant to become eligible for parole after 5 years. Court will not sentence pursuant to youth Corrections Act. Defendant

(continued)

DATE	PROCEEDINGS
1974	
11/13	informed of right to appeal. Newman, J. m-11/13/74.
11/13	HASKINS: DISPOSITION: Imprisonment for period not to exceed 25 years on Counts 1, 2 and 3 as a general sentence, pursuant to 18 U.S.C. 4208(a)(1), defendant to become eligible for parole after 5 years. Defendant informed of right to appeal. Newman, J. m-11/13/74.
11/13	SIMMONS: DISPOSITION: Imprisonment for period not to exceed 25 years on Counts 1, 2 and 3 as a general sentence, pursuant to 18 U.S.C. 4208(a)(1), defendant to become eligible for parole after 5 years. Defendant informed of right to appeal. Newman, J. m-11/13/74.
11/13	ALSTON: Judgment and Commitment filed and entered. Newman, J. m-11/13/74. Certified copies handed U.S. Marshal at New Haven.
11/13	HASKINS: Judgment and Commitment filed and entered. Newman, J. m-11/13/74. Certified copies handed U.S. Marshal at New Haven.
11/13	SIMMONS: Judgment and Commitment filed and entered. Newman, J. m-11/13/74. Certified copies handed U.S. Marshal at New Haven.
11/13	SIMMONS: Notice of Appeal, filed by defendant. Copies mailed to counsel.
11/15	HASKINS: Notice of Appeal, filed by defendant. Copies mailed to counsel.
11/15	HASKINS: Motion for Appointment of Counsel on Appeal, filed by defendant.
11/15	HASKINS: Motion for Release Pending Appeal, filed by defendant.
11/15	ALSTON: Notice of Appeal, filed by defendant. Copies mailed to counsel.
11/15	Defendants' Supplemental Submission in Support of Motion to Suppress Evidence Derived From Unlawful Electronic Surveillance, and Request For Hearing on Motion, filed by defendants.
11/15	Certified copies of Notices of Appeal and docket entries mailed to U.S. Court of Appeals.
11/18	HASKINS: Defendant's Motion for Appointment of Counsel on Appeal endorsed "Motion denied, without prejudice to seeking appointment by Court of Appeals. See Rule 4(b), Rules of the Court of Appeals for the Second Circuit." Newman, J. m-11/18/74. Copies mailed to counsel.
11/18	HASKINS: Defendant's Motion for Release Pending Appeal endorsed "Motion denied." Newman, J. M-11/18/74. Copies mailed to counsel.
*11/15	HASKINS, ALSTON: CJA Form 23, Financial Affidavits, filed.
11/15	ALSTON, SIMMONS, HASKINS: CJA Form 21 authorizing transcripts to be furnished by Gerald Gale, Court Reporter, to be used for appeal purposes, filed. Newman, J. Copies distributed.
11/19	Marshal's returns showing service filed; Warrants of arrest 3
11/19	Marshal's returns showing service filed; Applications for Writ of Habeas Corpus Ad Prosequendum. 3
12/2	Record on Appeal sent U.S. Court of Appeals. Copies of Index and docket entries sent counsel of record.

1 THE COURT: All right. With respect to the challenge:
2 to the array, the request to have the record in the Gonzales
3 case serve as the factual basis for the motion in this case
4 is granted, and on the basis of that record, the motion to
5 challenge the array is denied for the same reason set forth in my
6 ruling in the Gonzales case.

7 MR. CLIFFORD: Thank you.

8 MR. ZELDES: May I join in that motion. I had
9 previously made the pretrial motion which you had denied based
10 on that point concerning the petit jury.

11 THE COURT: The challenge to the array?

12 MR. ZELDES: Yes.

13 THE COURT: You want that to apply to the Schalit
14 trial?

15 MR. ZELDES: Previously, you had denied it -- I
16 would renew it and rely on the comments of Mr. Clifford just
17 made with respect to the Schalit case.

18 THE COURT: When you say "comment", you mean to have
19 the factual record available for purposes of your motion?

20 MR. ZELDES: Yes, your Honor.

21 THE COURT: All right.

22 MR. ZELDES: And to renew the motion to dismiss the
23 array on that basis.

24 THE COURT: All right. It can be renewed, and it's
25 denied for the reasons I have just stated.

1
2 MR. WILLIAMS: There is a motion to stay the proceedings,
3 strike the jury panel, and for a supplemental order concerning
4 the selection of certain petit jurors which are to be taken up.

5 THE COURT: That, as I understand it, is a motion to
6 incorporate into this record the record that has been previously
7 made in earlier cases.

8 MR. CLIFFORD: Most specifically, U.S. versus
9 Gonzales, which your Honor decided earlier this year, and
10 the Gonzales case is on this list also, and I would request
11 that the evidence offered in that trial and the decision of
12 the Court, I am assuming the Court is going to reach the same
13 decision on the evidence offered as it did in the Gonzales
14 case, that all be incorporated for the purpose of presenting
15 whatever evidentiary record is necessary in this particular case.

16 The motion that we have filed includes the affidavits
17 and the pertinent statistical information that was necessary
18 in Gonzales, that same information is made part and parcel
19 of the motion in this case, and I move that it be incorporated
20 and we need a decision on that before the impaneling of the
21 jury, otherwise, we waive any rights under that particular
22 motion.

23 MR. WILLIAMS: We join in that motion, your Honor.

24 MR. ROSEN: Your Honor, on behalf of Mr. Alston, I
25 join in that motion, and in addition, to Mr. Williams' motion
filed this morning for individual voir dire.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

V. :

CRIMINAL NO. B-115

LOUIS GONZALEZ ET AL :

RULING ON DEFENDANTS'
MOTION TO STRIKE JURY PANEL

Defendants have moved to strike the jury panel and stay proceedings pending issuance and compliance with an order to supplement the jury list with additional Negro veniremen. A similar challenge was presented and rejected in United States v. Jenkins, ___ F.2d ___ (2d Cir. Apr. 5, 1974). The facts relied on in support of this motion are slightly more favorable to defendants than the facts developed in Jenkins. There the evidence disclosed that those drawn from voter registration lists to be considered for jury service included 3.3% Negroes, compared to 5.45%, the percentage of Negroes in the adult population of the New Haven jury division. Current questionnaires of prospective veniremen disclose that the percentage of Negroes is now only 2.26%. It is thus apparent, as it was in Jenkins, that the use of voter registration lists in the New Haven jury division is not producing a percentage of Negroes equivalent to their percentage in the adult population. The question remains whether the extent of disparity violates statutory or constitutional standards.

In Jenkins, the Court of Appeals focused attention on "the difference that would result in the absolute racial composition of the venire as a result of under-registration of blacks as voters." (slip op. p. 2702). The percentages of 5.45% and 3.3%, when applied to a typical venire of sixty members, produced an average number (when rounded off to the nearest whole number) of three Negroes, if the venire were perfectly representative, compared to two Negroes, to be expected from a venire drawn from the jury wheel then in use. The current percentage of 2.26%, when applied to a venire of sixty, produces an average of only one Negro to be expected on each venire. The Court of Appeals did not think that a difference of one Negro per venire caused any denial of rights in Jenkins, and, though the issue is closer here, it does not appear that a difference of two Negroes per venire would change the Court of Appeals decision. Moreover, venires drawn in this District more often average forty members or less than sixty, and the percentages applicable in this case, when applied to a venire of forty (and rounded off to the nearest whole number) still produce an absolute difference of only one Negro.

Defendants seek to bolster the significance of the disparity in percentages with statistical evidence concerning the probability of different numbers of Negroes appearing on a venire drawn from lists that included 5.45% and 2.26% Negroes. Expert testimony disclosed that for such lists, the

following numbers of Negroes would be selected on a venire of sixty in the following percentage of drawings:

<u>Number of Negroes</u>	<u>5.45% list</u>	<u>2.26% list</u>
0	3.5%	25.4%
1	12.0%	35.2%
2	20.4%	24.0%
3	22.7%	10.7%
4	18.6%	3.5%
5	12.0%	.9%
6	6.4%	.2%
7 or more	4.4%	.4%

Thus, as defendants emphasize, a representative list would produce five or more Negroes on a venire of sixty in 22.8% of the drawings, while the actual list can be expected to produce five or more Negroes in only 1.5% of the drawings.

What seems significant for these defendants, however, is the result to be expected when a venire is drawn for their case, and this can be determined only by examining the average number of Blacks to be selected from the actual as compared to a representative list. As indicated, a difference of two Negroes is to be expected, on the average, with venires of sixty members, and a difference of one Negro is to be expected, on the average, with a venire of forty members.

While the statistical evidence supplies added reason for the judges of this District to give careful consideration to the need to exercise their discretion to modify the existing district plan for juror selection, see 28 U.S.C. § 1363(a), the record does not establish that use of the present jury wheel to select a venire from which the petit

jury will be chosen in this case denies defendants any protected rights. Accordingly, their motion is denied.

Dated at New Haven, Connecticut, this 22 day of May, 1974.

Jon O. Newman
Jon O. Newman
United States District Judge

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 74-2493

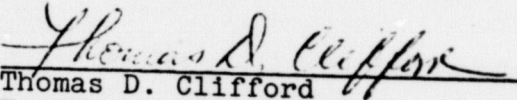
UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE

V.

HAROLD SIMMONS
DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief and Appendix of the defendant-appellant in the above matter was mailed postage pre-paid to Peter Clark, Esq., Asst. U.S. Attorney, Post Office Building, New Haven, Connecticut.


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